Workshop Summaries

Welcoming Comments

As budget deficits at all levels of government continue to be a major challenge, the discussion of public-private partnerships (PPPs) grows stronger, including facts and misconceptions. One misconception of PPPs is that they only work if they are large projects in urban areas. The transit systems in New England disprove this misconception every day: partnerships are a major component of small transit systems in the northeast. This panel set the tone for the whole workshop by highlighting how their agencies use PPPs. Although the Massachusetts Bay Transportation Authority is not a small system, many of their PPP projects are smaller. The speakers described how their agencies use PPPs for transit oriented development for stations, construction of new parking facilities, rehabilitation/creation of intermodal hubs and expansion of service. For the majority of transit agencies, the current focus is receiving and implementing ARRA funds, especially with the recent deadline (half the funds needed to be obligated by September 1st).

The Language of Public-Private Partnerships

Public-private partnerships (PPPs) cover a wide range of projects and the acronyms can be confusing for people unfamiliar with PPPs, especially because different states use different terms instead of PPPs. The presenter of this session strove to simplify the common language of PPPs, beginning with the letters used in common acronyms:

- D – Design
- B – Build
- O – Operate or Own (set by context)
- F – Finance
- M – Maintain/Manage
- T – Transfer to public ownership

This presentation outlined several different types of PPP projects and explained the benefits of each (list is not exhaustive): (1) O&M, (2) OMM, (3) DB, (4) DBOM, (5) DBFOM, (6) DBFOMT, (7) Developer Finance, (8) EUL and (9) Lease/Purchase. Although the types of PPPs listed above follow a standard pattern, there is no limit for innovation in PPPs and when the private sector is given the flexibility to be creative, it can come up with remarkable things. However, without a political champion and a dedicated team within the public agency, PPPs typically will not work.

Statutory and Regulatory Requirements

Before a PPP project is initiated, the project proposers should look into several aspects of the statutory and regulatory environment. The first question to ask is “are there existing laws in the state that grant the authority for a PPP project?” Several concepts should be considered before writing PPP legislation or entering into a contract. They include contract length, government accountability, non-compete clauses, payments and the revenue stream, probability of default, contract termination and force majeure. Regardless of how the law or contract is written, these concepts need to be considered in order to maximize the benefits of the law/contract. Several examples of PPPs were given, with a focus on the lessons learned with regards to the statutory environment. The panel also presented how PPPs are used in the northeast even though Massachusetts was the only state (in New England) to pass PPP legislation, which authorizes PPPs to leverage non-core assets.

Case Studies—Examples of State of Good Repair

FTA conducted a study of the state of good repair of the nine largest transit agencies in the United States. These agencies were selected because they account for 80 percent of all U.S. transit trips. The level of state of good repair was determined on a scale of 1 to 5 (with 5 the best and scores of 2.5 or less requiring maintenance) through the evaluation of the following categories: (1) age of the asset, (2) condition of the asset through a field inspection, (3) customer safety, (4) backlog of maintenance and (5) deferred maintenance. An estimated $50 to $90 billion is needed to address their backlog—about one third of the nine agencies' assets are in marginal or poor condition—and another $5.9 billion annually to maintain the assets once the backlog is addressed. Funding is one of the major challenges to achieving a state of good repair for all assets. Challenges also arise from incompatibilities between the federal capital assistance program, the nature of bus fleets and bus manufacturing. Reconsidering some of the regulations to account for changes in the transit sector over the past 30 years might help transit agencies achieve a state of good repair.

Guidelines for Surface Transportation Reauthorization: The Transit Industry Perspective

As most people have acknowledged, Congress will pass a supplemental bill to fund transportation before a new appropriations bill is created. Even though the bill will not be passed in the next few months, the discussion must still continue, to assume that the best concepts make it into the bill. PPPs are a tool that should be included in the transportation bill because PPPs help leverage public funds and improve project delivery and service. The leverage effect is extremely important because PPPs should not be utilized when there is no public funding available, but in conjunction with public funding and as a part of a regional plan.

Financing Transit PPPs

With the credit markets recovering slowly and limited government funding, agencies need to devise other ways to fund their projects. PPPs are a great tool for gaining a lower cost project delivery and competitive bidding; but, with current economic conditions, projects become slightly more difficult to do. Adding private funding to the mix allows the public agency to leverage its limited funds. The panel covered a wide range of topics including funding mechanisms, innovative funding sources and the markets. The positives and negatives of availability payments, the TIFIA program and private activity bonds were discussed. Transit oriented development and benefit assessment districts were discussed as innovative funding sources at can be used to complement traditional funding sources (local taxes and state and federal grants). Despite a downturn in activity in bond markets, activities have increased and a shuffling of resources is underway.

Preparing an RFP

Well-written, concise RFIs, RFQs and RFPs (Request for Information, Request for Qualifications and Requests for Proposals) can increase the response rate and reduce the contract negotiation period for PPPs. The RFI is an important tool that provides the public sector with feedback before issuing an RFP. The RFQ not only provides the public sector a chance to learn about potential bidders, but it also gives the private sector confidence that the public agency will narrow the field, thus increasing their chances of acceptance (as long as the private sector team was included on the short list). The first step in this process is to identify the goals, priorities and desired outcomes of the project. The full range of PPP options that are allowed under the law should be explored to determine what type of PPP will be most beneficial. Once all preliminary information has been collected, the RFP becomes the most important document with many different components. A sample process, showcases what is needed at each step, was provided. Officials from both the New Hampshire and Connecticut Departments of Transportation outlined what they do to issue an RFP and lessons they have learned for various projects.

Lessons Learned from a Penta-P

The Regional Transportation District (RTD) of Denver, CO was selected as one of the programs for FTA’s Pilot Public Private Partnership Program (Penta-P). Although RTD has used PPPs for several different projects, the Gold Line of the Eagle Project—construction of two lines, one corridor and a maintenance facility, as well as the operation and maintenance of these assets—falls within the FTA Penta-P framework. A draft RFP for industry review was released in December 2008 and the final RFP, which was set for distribution in May 2009, has been postponed. RTD has applied for $1 billion under FTA’s full funding grant agreement to help cover project costs; without the grant, the whole project will not be possible. Several key lessons about the use of PPPs were outlined, including the importance of developing a plan and sticking to it, staying prepared but flexible at the same time, risk transfer comes at a cost and the importance of developing a strong partnership.

Luncheon Keynote: Commissioner Joseph Marie, Connecticut Department of Transportation

Connecticut Department of Transportation Commissioner Marie gave an overview of what’s happening internationally, nationally, regionally and in Connecticut with public transportation. Based on recent personal travels to Ireland and travels to Europe, Marie believes the United States is behind many other countries when it comes to transportation—both roadways and transit. Many countries have invested heavily in their infrastructure and this has made them more competitive economically. In comparison, the U.S. is in the middle of a major infrastructure crisis with many roads, bridges, ports and transit systems in poor condition. A substantial disinvestment in infrastructure has brought the U.S. to this point and changing state DOTs are not equipped to solve this crisis. DOTs of late have changed and they are not the same as they were 20 years old; they will need help from the private sector, both in terms of financing and expertise. Private sector participation in infrastructure is another area in which the U.S. lags behind many countries. PPPs have been used in the U.S.; however, they are not as extensively used, especially in New England, as they are in Southeast Asia and parts of Europe.

Case Studies

This case studies panel was a departure from past workshops in that its focus was on smaller transit and bus systems, which make up the majority of transit operators in New England. Each case study presented a unique solution to a transportation problem.

The American Recovery and Reinvestment Act and Implications for Transit PPPs

Funding to FTA for fiscal year 2009 is the highest funding ever been, through a combination of the regular appropriations and funding through the American Recovery and Reinvestment Act (ARRA). The ARRA as it applies to FTA and transit was thoroughly explained, with particular emphasis placed on the goal of job creation. Information on the types of programs, details about the guidelines and timeline for applications were explained. As of the first major deadline, September 1st, over 86 percent of the ARRA funds for transit were obligated through 664 grants. FTA will make about 1,200 grants for the $8.4 billion allocated for transit projects. A rule was changed and transit agencies are now allowed to use up to 10 percent of ARRA funds for operations. The new Tiger grant program of $1.5 billion was explained. Examples of what transit agencies are doing with ARRA funds were presented for the Massachusetts Bay Transportation Authority (MBTA) and the Brockton Area Transit Authority (BAT). The MBTA received $232.2 million and bat received $3.85 million. MBTA's ARRA funds are being used for vehicle procurement and improvements to bus service, commuter rail, and transit stations. BAT's ARRA funds are being used to purchase 3 hybrid buses, two transit coaches, one 30-foot bus, AVL/GPS and security cameras as well as for preventative maintenance and BAT Transit Centre improvements. Each agency had its own project selection process that tried to account for ARRA requirements and agency planning goals.